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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

FRANK ESPINOZA,

Defendant and Appellant.

G047070

(Super. Ct. No. 11NF2507)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Craig E. Robison, Judge. Affirmed.

John L. Staley, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * *

We appointed counsel to represent defendant on appeal. Counsel filed a brief which set forth the facts of the case. Counsel did not argue against the client, but advised the court no issues were found to argue on defendant's behalf. Defendant was given 30 days to file written argument in defendant's own behalf. That period has passed, and we have received no communication from defendant.

Defendant Frank Espinoza pleaded guilty to violating Penal Code section 273.5, subdivisions (a), (e)(2) domestic battery, and Penal Code section 166, subdivision (c)(1) violation of a protective order. (All statutory references are to the Penal Code.) In support of his guilty plea, defendant offered the following statement which was signed by both him and his lawyer: "On August 13, 2011, in Orange County, I willfully and unlawfully inflicted corporal injury resulting in a traumatic condition upon Elizabeth Blanco-Haros, my girlfriend who I was living with and cohabiting with at the time, by grabbing her by the hair and arms and dragging her on the floor causing visible injuries to her body. [¶] I also admit that I was previously convicted of a violation of Penal Code section 243 [subd.] (e)(1) on March 11, 2010 in Los Angeles Superior Court case number CITOJB0203001. [¶] On October 12, 2012, in Orange County, I willfully, knowingly, and unlawfully, violated a protective and stay away order issued by a court pursuant to Penal Code section 136.2 in a pending criminal proceeding involving domestic violence as described in Penal Code section 13700, by contacting Elizabeth Blanco-Haros knowing that my actions were in violation of the court order." Prior to accepting his guilty plea, the court read those facts aloud to defendant and asked him whether those facts are true and correct. Defendant responded: "Yes, Sir."

Defendant was advised of his rights and the possible consequences of pleading guilty. The court found he understood his rights and that he waived them. The maximum sentence defendant faced for committing the crimes he admitted was four years in prison. The court suspended imposition of sentence and placed defendant on

formal probation for five years. Defendant accepted the terms and conditions of probation. One of the terms and conditions of probation was serving 180 days in jail.

At the hearing, the following colloquy took place between the court and defense counsel:

The court: “Serve 180 days in county jail, with credit for 24 days actual, 24 days good time/work time. You have 48 days — well, this is a 4019 calculation that is going to be different based on the day of the violation. He gets two for four instead of two for two.”

Defense counsel: “Our position, of course, your Honor, it should be retroactively applied.”

The court: “I understand that, but now we are starting to get appellate decisions that disagree with that position, so before I finish pronouncing the sentence I am going to amend the credits to reflect the 4019 statute in effect August 13. You want to talk to him about that?”

Defense counsel: “Hold on a second.”

The court: “Okay.”

Defense counsel [after a discussion with defendant]: “Your Honor, I have spoken with my client, that is not going to frustrate the plea, but I will say I would like to, for the record, lodge an objection to that. I know that there is an appeal waiver indicated on the Tahl form, but we would like to reserve the argument on the credits only potentially in the future.”

The court [after being told the prosecutor had no objection]: “Okay. You have 24 days of actual credit, 12 days of good time/work time, for 36 days of custody credit.”

Section 4019 has been amended several times in recent years. The instant crimes were committed in August 2011. The iteration of section 4019 in effect at that time stated in its subdivision (f): “It is the intent of the Legislature that if all days are

earned under this section, a term of six days will be deemed to have been served for every four days spent in actual custody.” (Former § 4019; Stats. 2010, ch. 426 § 2, p. 2088.) In *People v. Brown* (2012) 54 Cal.4th 314, the California Supreme Court held section 4019 is to be applied prospectively and that equal protection does not require otherwise, stating: “[T]he important correctional purposes of a statute authorizing incentives for good behavior [citation] are not served by rewarding prisoners who served time before the incentives took effect and thus could not have modified their behavior in response.” (*Id.* at pp. 328-329.)

We conclude the trial court did not err in calculating defendant’s credits, and after examining the record find no other arguable issue. (*People v. Wende* (1979) 25 Cal.3d 436.) The judgment is affirmed.

MOORE, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

FYBEL, J.